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OF

PRINCIPAL MATTERS.

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ABANDONMENT.

1. If on the vessel being seized the captain be thrown into prison, and on his being released makes immediate claim for her, and is threatened with death if he persist, he cannot be charged with negligence.

Thompson vs. Insurance Company 228

2. If the difficulty of recovering the vessel be great, and the prospect of getting her into possession so as to pursue the voyage feeble, an abandonment may take place. *ib.*

ABSCOND.

1. The general received opinion of the words *to abscond*, is the act of a person who leaves any particular place clandestinely, or of one who conceals or hides himself. *Johnson vs Thompson* 410

ADMINISTRATOR.

Letters of administration make full proof of the party's capacity, until they be revoked, they must have their effect, and the regularity of the proceedings on which they issued, cannot be examined collaterally.

Rills vs. Questi, 249

AGENT.

Unskilfulness in an agent is not excused by a contract in which it was stipulated he was to be governed by the directions of the principal.

Nichols vs. Hanse et al. 382

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1. Where the bank undertakes the collection of a note, it becomes the agent of the depositor, and if the notary employed to protest the note for non payment, fails to give the legal notice of protest to the endorsees, in consequence of which they are exonorated, the bank is liable for the neglect, and bound to pay the amount of the note to the person depositing it for collection.

Pritchard vs. State Bank, 415

2. But where an agent becomes liable to pay the amount of a note, in consequence of the neglect to give legal notice of protest, he is entitled to have the note, with all the remaining rights of the creditor, transferred to him. 415

4. Where a principal constitutes another person his attorney-in-fact to sell a specific piece of property within a limited time, if a sale is made subsequently, without a prolongation of the time by the owner, it is null and void.

Livingston vs. Coiron, 441

4. But if the principal writes to his attorney-in-fact just before the period of limitation expires, and states it to be his intention and will, that the sale be made at a period later than that specified in the original authority, a sale made subsequently to the time first specified, will be valid, and cannot be rescinded for want of authority in the agent to sell. *ib.*

AMENDMENTS.

1 Amendments are not matters of

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course, and cannot be made without leave of the court or consent of the party —if they be, they cannot be noticed.

Trahan vs. McMannus 209

2. Although no answer be put in, a supplemental petition cannot be filed without leave. To supply the deficiencies of a petition is to amend, and no amendment can take place in the pleadings without the leave of the court or the consent of the adverse party.

Baines vs Higgins 220

3. Where an amendment to a petition contains matter of substance, and the cause is tried without an answer to it, it will be remanded for want of the *contestatio lites.*

Allain vs. Preston 391

ATTACHMENT.

1. An attachment will lie against the incorporeal rights and credits of a debtor in the hands of garnishees, although it be sued out after transfer of such rights and credits to a third person, when no notice of such transfer had been previously given to the debtor.

Cox vs White 422

2. The irregularities of such a proceeding by attachment which has progressed to final judgment, cannot be inquired into in a subsequent suit by a new plaintiff, to recover the property attached. The judgment in attachment forms *res judicata* between the parties, and cures all irregularities when not appealed from. *ib.*

3. An attaching creditor has a right to call for proof of the consideration of an assignment which is opposed to him.

Mayor vs. Brown 492

4. Where the proof of that consideration is incomplete he may avail himself of the defect. *ib.*

5. If A receives money for the use of B, it cannot be attached as the property of A in his hands. The same rule applies to notes. *Rodgers vs. Hendsly* 597

ATTORNEY AT LAW.

1. The authority of the attorney is not restricted to the mere prosecution of the suit, but extends to every thing necessary for the protection of the interests intrusted to his care.

Paxon vs Cobb, 137

2. If he dismiss the action it is within the scope of his authority, and the plaintiff is bound by his acts. *ib*

3. Where an attorney undertakes to collect a debt, and before doing so takes a new obligation payable to himself, and gives up the old one to the debtor, the debt thus evidenced by authentic act, made payable to the attorney, cannot be *seized for* and made *subject to his debts,* when it is in evidence the attorney did not intend to appropriate the debt of his principals to himself; and where they assented to the act of the agent and claimed the debt as their own.

Rodgers vs. Hendsly, 597

APPEAL.

1. The appeal bond must exceed by one half the amount of the whole judgment appealed from, to entitle the appellant to a suspensive appeal.

Ross vs. Pargood, 85

2. And by the article 574th of the Code of Practice the judge must in all cases, whether it be a suspensive appeal or merely a *devolutive* appeal, fix the amount of the appeal bond which is the legal sum. *ib.*

3. No appeal lies in behalf of universal legatees from a rule directing the executor to pay into the treasury the balance in his hands.

Goslin's legatees vs. her heirs, 141

4. The supreme court will not remand a cause when it appears that justice has been done.

Balsineur vs. Bills, 151

5. Where the record shews that the testimony was taken down by the clerk no objection can be made to the certificate of the judge that the record contains all the evidence adduced.

Crawford vs. Jewell, 162

6. When nothing to the contrary appears the judge is presumed to have given his certificate on the event occurring which authorized him to give it. *ib.*

7. If the record shew that documents were *produced,* when nothing shews they were *filed,* there is no evidence of a diminution of the record. *ib.*

8. When the supreme court remands a cause on a single point, it remands it also for an inquiry into all the questions which grow out of the discussion on that point.

Brastow vs. Ventris, 172

9. If the appellant fail to bring up the record, and it be brought up by the clerk of the lower court and the appellee cited, he may pray for affirmation of the judgment.

Barbarin vs. Armstrong 208

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10. Without a statement of facts the supreme court cannot know what evidence was introduced, and are bound to presume until the contrary is shewn, that the judgment below was rendered under those circumstances, and with that evidence which made it correct and legal.
Flower vs Hagan et al, 225

11. Where the case turns entirely upon a question of fact, the supreme court will not disturb the verdict of the jury.
Green vs. Turner 254

12. When the appeal is taken for delay damages can only be awarded to the party in interest.
Adams vs. Dupy, 259

13. In cases of conflicting testimony, the supreme court will place great reliance upon the conclusion of the court of the first instance. *Irion vs. Love* 261

14. After the appellant has had the cause set down for argument, the appellee cannot make a motion to dismiss it,
O'Donnell vs. Lobdell 299

15. If the appellant does not comply with the condition upon which the appeal has been granted, by giving bond to prosecute the appeal, and suffers a year to elapse, the judgment becomes *res judicata*, and he cannot be relieved either by the district or supreme court.
Marigny vs. Stanley 322

16 Where the judge *a quo* has made a statement of facts, it is not required to shew that any attempt was made to have one made between the parties: the supreme court will presume that the judge has done his duty and did not volunteer in making a statemeut till it was his duty to do so. *Bachemain vs his creditors*, 346

17 Where there is a statement of facts, the cause is examinable in every one of its parts without exception. *ib*

18 Where the verdict of the jury is not manifestly wrong, it will not be disturbed.
Passemont vs Norwood, 389

19 If the damages assessed by a jury appear to be enormous and unsupported by the testimony, the judgment will be reversed *Bourginion vs Bourdousky*, 373

20 When the evidence is not conclusive it will be remanded to be submitted to another jury. *Cline vs Caldwell*, 396

21 In a case where no question of law is raised, the judgment of the court *a quo* will be confirmed, if it appear to be in conformity with the facts of the case.
Halphen vs. Franklin's Curator, 465

22 The supreme court will not proceed to the examination of a cause in which it

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is not evident that the whole record is before them. *Sibley vs Field*, 491

23 The supreme court, whilst sitting in the eastern district, during the term prescribed by the constitution, will not transact business arising in the western.
Millaudon vs Lapice, 511

24 The supreme court cannot examine a judgment of the district court unless brought before it by an appeal in the case itself, or when an action of nullity is properly brought and carried up.
Andrews vs Harmon, 587

AVERMENTS.

If the plaintiff does not entitle himself to a privilege by proper averments on the record, it cannot be allowed to him.
S. Dezier vs. Michaud 271

AVERAGE.

1. Every thing which is voluntarily sacrificed for the benefit of all concerned, is considered the subject of general, not particular average.
Teitzman vs. Clamageron 195

2. Masts hanging over the side of a vessel, fall under the head of general average; but they only do so for the value they had at the time they were cut away. *ib*

AUCTION.

1. By the English courts it was considered a breach of faith on the part of the vender, to employ bidders or puffers at auction. If the owner wished to prevent a sale under a certain price, he must proclaim the lowest bid he would take in putting up his goods.
Corryolis vs. Mossy 504

2. The purchaser could avoid a sale at auction, made by the aid of puffers or private bidders, on the ground that his assent had been obtained by fraudulent practices on the part of the vender or his agent. *ib.*

3. A purchase made at auction is similar to a private contract. In both assent is necessary in each party; and an offer to sell at auction, to the highest bidder, is not binding, unless the auctioneer assent to the bid that is made. *ib.*

3. So where property is put up at auction and the plaintiff becomes the highest bidder, the auctioneer may reject his bid and withdraw the property unless he will bid a certain sum more. *ib.*

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BACK CONCESSIONS.

1. Where a back concession is authorized to be located in the rear of the ancestor's plantation, and in the life-time of the latter, he and his son locate it in a more advantageous position; at the sale of the ancestor's succession the proces verbal of the sale purports to sell only the inchoate title or right to the concession, the son who purchased through an agent at sale, will be considered as having purchased the located tract which is most advantageous to him, and not the right to locate it in the rear of his ancestor's plantation.

Berard's heirs vs. Berard, 1

2. And on being sued for the price of the purchase according to the proces verbal of sale, he will be deemed to have purchased in error affecting the substance of the thing sold. *ib*

BAIL.

The bail has a right to file an answer and have his case tried by a jury.

Gale vs Quick's bail, 348

BILL OF EXCEPTIONS.

The party who excepts to the opinion of the court must take care that the bill of exceptions contain all the facts necessary to be known in revising the opinion of the inferior court.

Ingraham vs. White, 294

BROKER.

One who receives a note *as a broker* cannot claim any property under it as a creditor of the bailer.

Palmer vs. Haynes & Co. 370

BOND.

1. The causual insertion in a bond of an additional clause or condition not contemplated by the legislature, will not bind the surety.

Boswell vs Lanhart 397

2. If a bond be taken with reference to a particular law, it must be construed by it. *ib.*

BUILDER.

1. Where the contractor for a building is sued for materials furnished, and the owner made party to the suit, the latter is only responsible for the costs incurred after issue joined.

Rabassa vs. Passement 178

2. A proprietor may cancel at pleasure the contract with an undertaker to build, but in the exercise of this right, the use of it must be considered as putting an end to the contract in all its parts and relations, and authorizes a valuation of the expense and labour incurred by the undertaker by other evidence than that of the written contract itself.

Villalobos vs. Mooney 321

3. The amount stipulated in a contract thus avoided, may be correctly used as a means to ascertain the just value of the work performed, but ought not to be considered in exclusion of all other testimony. *Ib*

4. Where architects and undertakers are called upon to estimate the value of work and materials and differ in their opinions, the lowest estimate will be taken. *Ib*

5. Unless there be a contrary stipulation in a contract for building, the materials of an old house removed are, by custom, considered as belonging to the undertaker as an equivalent for his expense and labour in removing them. *Ib*

6. In a contract to build, if the owner consent to a deviation from the original plan, he is liable to the undertaker for such extra work as may be caused by the change.

Fossier vs. Herries 490

CITATION.

1. Although a party may be arrested and held to bail, service of the petition and citation cannot be dispensed with.

Wall vs. Wilson 169

2. Knowledge of the suit on the part of the defendant, no matter how clearly it may be brought home to him, will not suffice if this formality has not been pursued. *Ib*

3. Copies of citation require no seal.

M'Donogh vs. Gorman 310

CITY COUNCIL.

1. The city council have the power to establish markets, and to provide for the cleanliness and salubrity of the city.

Morana vs Mayor 217

2. They have an undoubted right to prevent the violation of any ordinance they may pass in relation to the markets. *ib.*

3. They have the right to confine the sale of oysters to certain designated stands, and to prevent their being sold at any other. *ib*

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CERTIFICATE.

Where the certificate is signed by a person who styles himself judge of probates, he will be presumed to be the sole judge of the court. *Dismukes vs Musgrove* 335

CODE OF PRACTICE.

There is a clerical mistake, or typographical error, in that part of the English text of article 575 of the Code of Practice which says the appeal must be taken for "one-half the amount of the judgment," &c. It should read, "*exceeding by one-half* the amount," &c.
Ross vs. Pargoud 85

COMMUNITY.

1. The community of acquets and gains or legal partnership, is so inconsistent with the ordinary commercial partnership that both cannot exist together, and the legal supersedes the commercial.
Squire et al vs. Belden et al 268

2. Whether a commercial partnership can exist between husband and wife even when there is no community of acquits and gains; quere. *ib.*

COMPENSATION.

1. Compensation cannot be pleaded in cases of insolvency, when the claim of the debtor to the insolvent proposed to be compensated, has been acquired by such debtor subsequently to the failure of such insolvent.
Crain vs. Baillo et al 82

2. A claim due from an insolvent debtor to a partnership firm, cannot be allowed in compensation of a debt due by an individual member of the firm to the insolvent. *ib*

3 Payment by a firm will not support a claim in compensation between one partner and the person for whom it was made. *Terran vs. Delastra* 324

4. Where three individuals composed a partnership in a bakery, and two of them, by a written document (before the dissolution of the firm) acknowledged a stated amount due to the third; if this document be transferred by the latter, the transferee cannot plead it in compensation of a debt which he owes to one of the two partners.
Gomez vs. Ramos 426

CONSIGNEE.

1 Where mutual accounts exist between the consignor and consignee, the latter has no lien upon the goods attached in his hands, unless there be proof of a balance in his favor at the time of the attachment. *Russell vs. Buckles* 417

2 A consignee has a privilege for advances made upon goods consigned to him. *Phelps vs Haring et al* 439

CONTINUANCE.

1 If the sheriff returns that a witness is not to be found, the party praying continuance on that account, must shew that he is a resident of the parish, or that he took steps to obtain his deposition.
Saul vs See's Curator, 130

2 Where a continuance is prayed for, owing to the want of a return to the commission which issued seventeen months before, the affidavit should state the causes which led to the failure, and the probable grounds of thereafter obtaining the testimony sought. *Silva vs Lafaye,* 198

3 An affidavit for a continuance, setting forth that the party is informed and believes, is insufficient if it does not contain the name of the informer.
Trahan vs McMannus, 209

4 A cause will not continue without the oath of the party that due dilligence has been used. *Thompson vs Ins. Co.* 228

5 A continuance was properly refused where the party was wanting in the use of legal dilligence. *Adams vs Dupuy,* 259

6 The necessary absence of the counsel from indisposition, or his attendance on public business, entitles the client to a continuance; but he cannot claim this indulgence on the voluntary absence of his counsel in attending another court, especially when another counsel is engaged and attends, and it is not alleged that the one absent is in possession of important papers, which could not be obtained from him. *Ingraham vs White,* 294

7 A continuance was properly denied where the party appeared generally, to have neglected the means of preparing his defence; and under such circumstances, the court did not err in refusing a new trial. *Erwin's Ex. vs Trion,* 305

8 The affidavit necessary for the continuance of a cause may be made by the person who represents the absent party; but where any thing occurs which excites suspicion that the party has absented himself to obtain a greater latitude through the oath of an agent or his attorney than he could have had were he present, the

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continuance may be properly refused.
Penne vs Tourne, 462

9 The oath of the attorney to facts, the knowledge of which he derives from his client, is sufficient for a continuance. *ib*

CONTRACT.

The master of a steamboat who contracts for repairs, is personally bound:—the parties contracting with him have a double remedy; they may sue him or sue the owners, on a contract made with their agent. *Mead vs Buckner*, 282

COHEIR.

Whatever right one may have against his coheirs, he cannot avail himself of it to avoid paying for property bought at the sale of the estate. *Rills vs Questa*, 249

COSTS.

1 The plaintiff or party who succeeds in a suit, has a right to recover his costs from those against whom he obtains judgment. *Brasseur vs Her Husband*, 590

2 But where there are two sets of defendants, having distinct interests, as far as the judgment operates in each distinct interest or party, each one must pay his proper proportion of the costs accruing in his controversy with the plaintiff. *ib*

CURATOR.

1 Complaints as to the conduct of a curator can only be redressed when *as curator* he presents his account. Particular acts of the representatives of estates cannot be singled out by individual creditors, and made the basis of a suit.
Watts vs McMicken, 182

2 A stranger, litigant in our courts, cannot have the benefit of their process and at the same time refuse obedience to their orders: so a curator, who has gone abroad, cannot obtain the aid of the court of probates for the delivery of the papers of the estate while he refuses to comply with an order to account.
State vs. Pitot, 266

3 A curator must settle his accounts with the court of probates, or annex them to his answer and file his vouchers, in order to support the plea of fully administered. *ib*

4 A curator *ad hoc* is intended by law as a protector to the interests of the absentee, and should be considered as principally beneficial to the defendant, and consequently, the plaintiff in such a case, is not bound to pay for services rendered by the curator. *Pontalba vs Pontalba* 466

DEMAND.

1 A demand of payment must be made at the place designated if it exist; if it does not, the plaintiff will recover without.
Erwin vs Adams, 318

2 Demand of payment at a place designated by the note, is a condition precedent to a recovery on it.
Smith vs Robinson, 405

DEPOSITE.

The act of the creditor in withdrawing the deposite made by the debtor, of the amount which he believes to be due, is not conclusive that nothing more is owing. *Forsyth vs Lacoste*, 319

DONATION.

1 A donation of immovable property may be made, and stand good against creditors, where the father put his daughter and her husband in possession of land, which was afterwards sold and the price received by the husband of the daughter, and the sale ratified by the father.
Chachere vs Dumartrait, 38

2 In this case the price of the land sold, will be considered as due to the father, but received by the son-in-law as a donation or marriage portion due to the daughter, which is as completely effected as if delivered from the father to the daughter. *ib*

3 A donation under the form of an onerous contract is not void.
Trahan vs McMannus. 209

4 A donation disguised under the form of a stipulation, *pour auturi*, is revocable by the donor until accepted; and there are no exceptions in favor of minors.
Dismukes vs Musgrove; 335

5 A donation *propter nuptias* cannot be made to the prejudice of creditors.
Mercer vs Andrews, 538

DEBTOR AND CREDITOR

In Solido.

A creditor of several debtors *in solido*, who has received a dividend from the estate of one of them, can only claim from the estate of the others, the amount due, after deducting the payment made;

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and though he may have proved his debt against each estate for the whole amount, if he subsequently receives a portion of it, from the estate of one of the debtors, his rights on the estates of the others are estimated in relation to the balance due, after deducting that payment, not by the amount of the original debt.
Armor vs his creditors, 376

ERROR.

1 In a suit for the price of a tract of land sold, the defendant may successfully resist payment on account of error falling on the substance of the thing sold
Berard's heirs vs. Berard, 1

2 A party is entitled to recover when he has paid in error. *Legon vs Nav. Co.* 128

EVICTION.

The owner who procures the eviction has a right to select whether he will pay the value of the materials and the price of the workmanship, or a sum equal to the enhanced value of the soil.
Boatner vs Ventris, 172

EVIDENCE.

1 Where it is shewn the attorney acknowledged the receipt of half the amount of a claim, by receiving a note from the party payable in bank, and dismisses the suit instituted against another of the debtors under this claim, for the balance, on the suggestion that the claim is settled, and the presumption is, that he has collected the whole debt, and is accountable to the plaintiff for it, unless this presumption is destroyed by contrary proof.
Hagan et al vs. Brent, 26

2 Parole testimony is inadmissible to shew that another person was to have signed a surety bond in addition, when the bond itself does not shew the facts, or admit such an inference.
Police Jury vs Have et al. 42

3 In a suit between the endorsee, who is the holder and the drawer and endorser of a bill of exchange, the consideration may be impeached; and the question, whether the drawer ever received consideration or payment therefor? inquired into. *Booker vs Lastrapes*, 52

4 And where from the evidence, it appears doubtful, whether the drawer of the bill has received the value or any consideration therefor, the case will be remanded for a new trial *ib*

5 An instrument of writing under private signature, and not proved by the subscribing witness, is still admissible as evidence of title, where it had been four years subsequent to its date recognized by authentic act; but it will only take effect from the latter date, without proof being made of the original deed.
Scott vs Calvit et al. 69

6 Parole testimony is admissible to prove the sale and transfer of a note payable to order, without endorsement or written transfer
Hughes vs Harrison et al. 90

7 One of the payees of a promissory note, who together with the other have sold or exchanged it without recourse on them, is a competent witness to prove the consideration for which the note was given. *ib*

8 The proceedings on the cession of the plaintiff's debtors are the best evidence to shew his insolvency, and are admissible as proof when judgment rendered on them is not even signed
Pargoud vs. Morgan, 100

9 The record of a judgment against the agent, is legal, though not conclusive evidence, of the settlement of a debt due to the principal. *ib*

10 The jury may correctly infer from the relation between the principal and agent, (they being brothers) and the long silence of the former, that the settlement was made with his consent, or was afterwards approved: in this instance, however, the cause was remanded
Kemper vs Turner, 149

11 Parole evidence of the *lex non scripta* of a foreign country must be received without the party offering it being required to show that there is no statute law on the subject. *Newsom vs Adams*, 153

12 The extension of a lease may be proved by parole, and the lessee is a competent witness for this purpose if he be disinterested by a release. *Mossy v Mead*, 157

13 It is not sufficient ground to reject a witness that another has or may contradict him *Thomas vs Thomas*, 166

14 The existence, loss, and contents of a will may be proved by parole testimony

15 A policy of insurance is good evidence to shew the fact of the vessel having been insured, but furnishes no proof as to her value. *Silva vs Lafaye*, 198

16 A receipt, of a date posterior to the *contestatio lites*, is no evidence of the existence of the facts alleged by the pleadings against either of the parties to the suit. *Baines vs Higgins*, 220

17 Evidence that a document had been

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seen among the papers of a deceased person, searched for and could not be found, and that some of his papers were lost, is not sufficient to enable the party to give parole proof of its contents.

18 A plaintiffs warrantor is an inadmissible witness in support of the plaintiffs title. 220 *ib*

19 It behooves the plaintiff in a possessory action, to shew that he possessed as owner, or that as *usu fructuary*, he was entitled to the use, or had a real right growing from such real estate or slaves.

Preston vs Zabrisky, 226

20 Testimony should be weighed by probabilities, and its truth be rather ascertained in this manner than by counting the witnesses. *Kemp vs Wamack*, 272

21 Where the evidence is contradictory, but preponderates in favor of the party for whom the jury find, the supreme court will not interfere with their verdict.

Mead vs Buckner, 282

22 Erasures or interlineations in the substantial part of an instrument, are presumed to be false or forged, and must be satisfactorily accounted for before the instrument can be received in evidence

McMicken vs Beauchamp, 290

23 A vender of the right of mortgage, who warrants only the existence of his claim, cannot be objected to on the score of interest, to prove possession in his vendee *Orillon vs Nerault*, 292

24 Parole evidence may be given of the existence of articles of partnership, but not of their contents.

Ingraham vs White, 294

25 A record ought not to be rejected because different parts of it may have been obtained from the clerk at different times, where the certificate shews that the record of the whole proceedings is complete *Dismukes vs Musgrove*, 335

26 In a suit upon a note, the plaintiff is not bound to prove the defendant's signature unless it be expressly denied; but if neither the allegations in the petition, nor interrogatories annexed thereto, require such denial or admission, then every means of defence is open to the defendant under the plea of the general issue *Bennet vs Allison*, 419

27 The purchaser of slaves who has given his note in payment, cannot prove a condition different from that expressed in the deed of conveyance

Goodloe vs Hart, 446

28 Nor can he prove by parole, that a condition was added by consent of parties after the conveyance was executed.

29 A party is excluded from being a witness on the ground of interest, and when that interest ceases, the objection is removed *ib*

30 Though a witness may, from the face of the record, appear *prima facie* interested, he should not be rejected without enabling him to explain his situation, by being questioned on his *voir dire*. *Spencer's Syndics* vs *Lee et al.* 472

31 The declarations of the plaintiffs agent are not legal testimony against the defendant, and should be rejected by the court *ib*

32 Where a witness was permitted to testify to the contents of an account book, and after judgment, the party moves for a new trial on the ground that he has discovered where the book is, but does not state that if produced it would contradict the statement of the witness, the new trial will be refused.

Pelayvin vs. Maurin, 480

33 The executor cannot prove that a receipt of the plaintiff for payments made by the deceased, as attorney for the defendants, embraced a larger sum than was actually paid—this would be proving a negative. Nor can he support his testimony by an account between plaintiff and the deceased; for the defendants are no party to it. *Baudin vs. Conway*, 512

34 When a stipulation is made, prolonging payment, on condition that the debtor pays interest annually; the latter must shew a performance of the condition on his part, to entitle him to its benefit.

Borel vs. Fuselier, 567

35 If the defendant relies on the performance of certain conditions which entitle him to an extension of credit, he must shew by proof, a performance—the plaintiff is not required to shew a non-performance. *Ib*

36 The allegation that interest was not paid is a negative assertion, which according to the rules of evidence, throws the proof on the adversary. *Ib*

37 Where a slave is claimed and held as having been purchased for the defendant and with his funds, but the title is taken in the name of the person making the purchase, parole testimony is inadmissable, to prove that the purchaser acted as the agent of the defendant, and bought the slave with his funds.

Muggah vs. Greig, 593

38 Written evidence must be produced

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to prove the agency of another, in making a contract of sale or purchase or transfer of immoveables or slaves, which is required by law to be in writing. *Ib*

39 So where a person buys a slave and takes the title in his own name, and another person claiming him as having been purchased for him and with his funds, he must shew a written authority to purchase, in order to hold or recover the slave. *Ib*

40 Parole evidence is admissible to shew that an act or obligation taken for a debt by an agent, and made payable to himself, is the property and right of his principal, although it appears on the face of the instrument to be due to the agent.
Rogers vs. Hendsley, 597

EXECUTION.

1 Nothing in our jurisdiction authorizes two executions issuing at the same same on one judgment, whatever be the number of persons against whom a joint recovery is had, and though they reside in different parishes.
Hudson vs *Dangerfield et al.* 63

2 Where two executions issue, one after the other, on the same judgment, although to different parishes, the second is irregular, but nothing ought to prevent the execution of the first one. *ib*

3 If two executions issue simultaneously on the same judgment, and one of them acted on, the other may be enjoined if attempted to be enforced also. *ib*

4 An executor who presents his account and prays for a discharge, must cause the heirs to be cited.
Marchand vs *Garcie*, 147

5 A sheriff or marshal is no further the agent of a plaintiff in execution, than that which is derived from the writ placed in his hands; the instant it is returned into court, or the return day expires, the authority of the officer to enforce the judgment or receive the money in discharge of it, also expires, unless he has previously made a levy, in which case the law permits him to sell the goods seized. *Rothschild et al* vs *Ramsay*, 277

6 The act of the legislative council of the territory of Orleans, declaring that the personal property of a person against whom a *fi. fa.* shall have been directed, is bound by the delivery of the writ to the sheriff, was not changed until the adoption of the Code of Practice.
Bradbury et al. vs. *Morgan et al.* 476

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EXCHANGE.

If A receive from B a slave at a stipulated price, to be paid for out of the proceeds of the sale of the slave of A delivered to B at the same time, it is a contract of exchange, although the title be passed in the form of a sale.
Ails vs *Bowman*, 251

EXECUTOR.

A person who signs a draft as executor is liable in his private capacity, and if he be sued as executor and there be a prayer for general relief, judgment may be given against him individually, if it appear that his liability, as such, was sought to be established. *Russell et al* vs. *Cash.* 185

FEES OF OFFICE.

1 Clerks of courts have the exclusive right of copying, or causing to be copied, the documents of which they are authorized to issue copies. They are answerable for the due and timely issuing of these copies, and for their correctness and fidelity; and the parties have not the right to perform services which the law imposes upon clerks, and thus to deprive these officers from any part of the compensation which the law has provided for them.

2 The clerk has a right to charge for the copies although he use those furnished by the plaintiff.

3 Copies of papers coming from a clerk's office must be official. He must certify that they are true copies, and may charge for the certificates, but not for affixing seals to them.

4 Judgments of nonsuit are considered as final in the cause; and whether they be entered in one or more entries, the clerk has a right to charge against each defendant.

6 The costs may be taxed although not required by either of the parties.

6 The clerk cannot charge for recording citations, and for certifying the recording of petitions, answers and citations. *Gorman vs. M'Donough*, 310

FORFEITURE.

The introduction into Mexico of prohited articles produces their forfeiture, but no penalty is inflicted on the vessel which carries them. *Thompson* v *In. Co*, 228

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FRAUD.

1 A sale of property by a debtor who has not sufficient to pay all his debts, made to one set of creditors, will be considered in fraud of the rights of the remaining creditors, and will be annulled and set aside, though made in ignorance on the part of the vendees, as to approaching insolvency, and in all other respects executed with the utmost good faith. *Taylor et al* vs *Knox*, 16

2 Questions of fraud partake of both law and fact, of acts done, and their want of conformity to morality and established law, prescribing the rules by which property is held. *McLaughlin* vs *Richardson*, 78

3 A sale which is merely fictitious, the fraud and nullity may be only relative, and such sale might be good as a donation, or only void as to previous creditors. *ib*

4 But when a sale is made with the avowed intention to defraud, the act is so contaminating and immoral, that it entirely vitiates the contract and renders it null and void to all intents and purposes. *ib*

5 The charge of fraud cannot be supported by alleging the neglect of the officer who sold, in complying with any of the informalities required by law, unless it be shewn that the party charged was cognizant of his noncompliance, or knowingly availed himself of it. *Dellee* vs *Walkins*, 306

6 The execution being unauthorized by the judgment, could confer no title on the creditor by whom this irregularity was committed. 544

FRUITS.

Evidence must be received of the value of the fruits from the period when the possessor is ascertained to be in bad faith. *Boatner* vs *Ventris*, 172

HEIR.

1 The heir may institute suits before he accepts or rejects the succession. *O'Donald vs. Lobdell*, 209

2 If a defendant deny that he is heir, he cannot be made liable until it be shewn that he accepted the inheritance, although by the will, he be appointed executor and residuary legatee. *Cotton vs. Cullen*, 371

HUSBAND AND WIFE.

1 In all cases when the husband and wife are not separated from bed and board, in law the domicil of the wife is to be considered as that of her husband, and service of citation is good as to the wife, when left at the domicil of the husband, although she resides in a different parish, when they are sued jointly. *Dugat* vs. *Markham et al*, 29

2 But although the husband must in all cases, unless he refuses, and then the judge authorize the wife to sue and be sued, yet the husband has no right to appear and file an answer for the wife without her consent, where she lives separately in property, and is sued jointly with her husband. *Ib*

3 The construction and effect of an act of voluntary separation and of a division of property between husband and wife, made in 1825, before the adoption of either of the civil codes, must be determined by the laws of Spain. *Labbe's heirs vs. Abat*, 554

4 According to these laws the husband and wife were considered so far separate persons, that they could validly enter into any onerous contract—a sale being the example given to illustrate this doctrine. *Ib*

5 The husband and wife were prohibited from making donations to each other during marriage, of property actually in possession; but the wife might renounce her right to the aquets at any time before, during and after the dissolution of marriage. *ib*

6 A contract in which husband and wife mutually agree to separate, divide, and each take a specific portion of the community property, and renounce all right and claim to the community of acquets and gains, partakes strongly of the nature of a contract of exchange, by which each of the parties gives up all claim to the whole, in consideration of obtaining a distinct right and title to a part of the matrimonial community property. *ib*

7 Such a separation and division was strictly speaking a partition of common property and cannot be assimilated to a donation. *ib*

8 The contract of exchange, in 1805, between the husband and wife operated as a good and valid separation of goods between the contracting parties and a dissolution of the community previously existing between them, and a renunciation of the acquets and gains subsequently acquired. *ib*

9 The voluntary separation of husband and wife, did not produce a legal separation *a menso et thoro*. The husband

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would still be bound to provide for her maintenance. *ib*

10 The circumstance of the husband having an adulterous intercourse with his mulatto slave in the common dwelling, may have induced the wife, the more willingly to abandon his bed; but is not such an act of legal constraint and coercion on her, or of immorality in him, as to render the contract of exchange, and dissolution of the community of property, null and void. *ib*

11 If the wife makes a concealed donation by acknowledging subsequently to the marriage, that her husband brought in twenty-five hundred dollars when in fact it was owned by her at the time, such donation by the Spanish laws is only revocable during the life time of the doner, and at her instance. *ib*

IMPROVEMENTS.

1 A party evicted by a superior title, and who does not claim of the successful claimants the value of the improvements they have put on the land, cannot recover of a subsequent purchaser of the claimant the value of such improvements.
Harrison et al vs *Faulk et al.* 92

2 There is no privity of contract between the parties, after the lands have passed into the hands of subsequent purchasers; and the party evicted has no lien or tacit mortgage on the land for the remuneration of expenditures for the amelioration or value of the improvements put on the land. *ib*

INDORSER.

The holder of a negociable note by blank endorsement, may maintain suit on it without filling up the same to himself.
Griffon vs *Jacobs*, 192

INSURANCE.

1 When a vessel sails under charter-party, the owners have an insurable interest in freight. *Hodson* vs *In. Co.* 341

2 The failure of the insured to communicate to the assurers the knowledge of the fact, that the vessel was under charter-party, is not such a concealment as will annul the policy. *ib*

3 The knowledge or information material for the insurer to know, and necessary to be communicated to him when the contract is made, is a question of fact, and the materiality of the information is

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to be determined under a consideration of all the circumstances which belong to the case. *ib*

4 If a vessel be insured for six months trading between New Orleans and any port in the West Indies, United States or Gulf of Mexico, except Rio Grande, or Brassos of St. Jago, the port of New-Orleans is made one of the *termini*, and a voyage between a port in the West Indies and the United States, is not within the policy. *Lippincott* vs *In. Co.* 399

5 The terms of a policy of insurance, "free from average unless general," are convertible with those of "total loss;" and to enable the assured to recover, there must be a total destruction of value — Whether a total physical destruction?— Quere. *Arrandezmendi* vs *In. Co.* 432

6 The preservation of the thing insured up to the time of its arrival at an intermediate port and sale there, produces the same effect as a sale at the *terminus*, unless it be shewn the cargo could not be carried there without a total loss being the inevitable consequence. *ib*

7 Where the insured, by the terms of the policy, take on themselves all risks, excepting a total loss of the thing insured, a partial destruction of the object at an intermediate port, does not discharge the warranty. *ib*

8 The circumstance of the ship being a general one makes no difference in cases of this kind. *ib*

8 Where a house is insured the back-buildings will be considered as accessaries to the main building, and embraced by the policy. *Workman* vs *In. Co.* 507

INSOLVENT.

1. The decree of the Supreme Court remanding a suit against a firm, one of whom is insolvent, virtually cumulates the suit with the other proceedings *in concurso*. *Warfield* vs. *His Creditors*, 188

2 The losses sustained by an insolvent must be shewn by the affidavit of two witnesses. *Sheppard* vs *His Creditors*, 315

3 One creditor cannot be called before a notary to deliberate on his or the insolvent's affairs—meetings of creditors take place in order that the minority may be compelled to abide by the decision of the majority in sums or claims, and where there are less than three creditors there cannot be a majority. *ib*

4 If an insolvent has a right to cede his goods to an only creditor, he ought to have him cited into court. Less than

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three creditors cannot form a *concurso*, for there is no minority to be coerced. *ib*

5. The syndic of an insolvent cannot, on a mere motion, be made liable *de bonis proprius*.

Bachemain vs. *His Creditors*, 346

6 By the laws of Louisiana, where an insolvent debtor makes a cession of his goods to his creditors and they accept it, there is a transfer of the property; and a judgment obtained in the court of the U. States, posterior to that transfer, cannot affect the property ceded. The State has a right to regulate property within her limits, and to say how, when, and on what conditions it shall cease to belong to one person and be transferred to another.

Schroeders' Syndic vs. *Nicholson*, 350

7 The deliberations of creditors need not be homologated. *ib*

8 The charge of fraud against an insolvent must be made on the written depositions of a creditor, stating specially the acts of fraud. *Gouy* vs. *His Creditors*, 357

9 If the creditors refuse a discharge, the judge cannot grant one. *ib*

10 Where one of the joint obligors of a note given by a particular partnership fails, and places the payee as a creditor on his *bilan* for the whole amount, he is nevertheless liable but for half.

Bennett vs. *Allison*, 419

11 If an insolvent debtor, in actual custody, applies for the benefit of the insolvent laws, makes a cession of his property, which is not accepted by his creditors who do not attend, and the sheriff is appointed syndic by the court, to receive the cession, the debtor is thereby discharged from his confinement in the same manner as if the creditors had attended and accepted the surrender.

Caldwell vs. *Bloomfield*, 503

12 Where creditors are cited at the instance of an insolvent debtor in actual custody, to attend before a notary and receive a surrender of his property, and fail to attend, or make opposition to the homologation of the proceedings within ten days after they are returned into court, they have the authority of *res judicata*, and cannot be disregarded by the creditors. *ib*

13 A surrender of property by an insolvent debtor in confinement operates a discharge of his person from imprisonment, when not opposed, and there is no breach of the conditions of the bond, occasioned thereby, which will make the obliger and his securities responsible to the plaintiff in execution. *ib*

INNKEEPER.

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Where a person permits another who is living about his house, and sometimes doing business for him, to have access to his bar and drink his glasses without charge, in a subsequent settlement of the accounts between the parties, the innkeeper will not be permitted to make out an account for his bar bill;but such an account will be considered an after thought and be disallowed. *Grig* vs *Hathern*, 57

ILLICIT TRADE.

Illicit trade is that which is made unlawful by the laws of the country where it is to be carried to. That trade which the officers of the government may choose to designate as illegal, to suit their purposes,cannot be recognized as such by the tribunals of other countries.

Thompson vs Insurance Co. 228

INTEREST.

1 Legal interest on sums discounted in bank, is the rate of interest established by their charters. The *maximum of interest* on notes payable more than four months after date, at the Bank of Louisiana, is nine per centum, which is the legal interest to be allowed on such judgments in their favor.

Bank of Louisiana vs *Sterling*, 60

2 Interest given by a judgment, forms a part of it, and must be calculated in and secured in the appeal bond, which together forms the judgment of the court appealed from. *Ross* vs *Pargoud*, 85

3 Interest cannot be allowed on a judgment given for the balance of an account between the parties, where payments have been made for costs, and on other accounts. *Baudin* vs *Conway*, 512

4 An action of interest cannot be maintained apart from the principal.

Harly vs Harly, 518

6 Interest will not be allowed on a verdict finding a special sum in damages: and if the judgment gives interest, even from the signing it, it will be reversed.

Trimble vs Moore, 577

INTERROGATORIES.

1 A plaintiff who is interrogated may write his answers on one piece of paper and his oath on the other.

Roy vs *Wiley*, 315

2 The defendant's answers to interro-

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gatories will not avail against the testimony of two credible witnesses.
Bourgeois vs. *Bourg* 537

3 When interrogatories are propounded to the plaintiff to be answered in open court, and no day moved for and fixed by the court on which to answer, the plaintiff's neglect to answer will not authorize the interrogatories to be taken for confessed. *Stewart vs Carlin et al.* 12

4 When the defendant annexes interrogatories to his answer and prays that "the plaintiff may be ruled to answer them in open court;" he must, according to the provisions of the 351st article of the Code of Practice, move the court to appoint a day for the plaintiff to appear and answer; and not having done so, he will be considered as having waived his right and dispensed the plaintiff from the obligation of answering. *ib*

5 Where an order to take depositions has been made at a previous term, and the plaintiff at whose instance it was made, takes out a commission in pursuance of it, and submits his interrogatories to which cross ones are filed, it is sufficient to entitle them to be read in evidence, although the usual affidavit has not been made and annexed. *Rife vs Henson*, 96

6 The plaintiff may interrogate the defendant as to the truth of the facts alleged in the petition; but the latter may except to an interrogatory which from a blank being left therein, or other circumstances, is rendered unintelligible.
Perron vs Grassier, 152

7 The Code requires the magistrate to draw a process verbal of the taking of the depositions, annex the same to the commission and interrogatories, if there be any, and seal the same with his private seal. *Ingraham vs White*, 294

INVENTORY.

When an inventory of the property of the wife is made before marriage, expressly stipulating that the property or goods brought into marriage, are to be considered as the *biens propres* of the wife, such property will be considered as *paraphernal* and not dotal.
Gilbeau's Heirs vs. Cornier, 6

INTERVENTION.

If pending a suit the plaintiff sells his title, or the property in contest to another, the purchaser may intervene and become a party to the action.
Marigny et al. vs Nivet et al 498

INSTRUMENTS,

Construction of.

1 The intention both of the obligor and obligee must be sought for in the true meaning and spirit under which the agreement was made, as expressed in the written instrument. *Workman* vs *In. Co.* 507

2 In the construction of every instrument the ordinary and legal meaning of words must be taken into consideration. *ib*

The common and ordinary acceptation of the word house, embraces every thing appurtenant and accessary to the main building; so in legal acceptation, the sale of a house carries along with it whatever may be necessary to a full and complete enjoyment of the thing sold. *ib*

INJUNCTION.

1 It is not enough to shew mere irregularity to obtain an injunction. Injury to the applicant, or apprehension of it, alone can authorize a resort to this extraordinary remedy for relief.
Hudson vs Dangerfield et al, 63

2 Relief by injunction is an equitable remedy, and those who seek equity must do equity. 63

3 An injunction will not be dissolved even if ever so irregularly obtained, if it appears from the circumstance of the case, the party, by an immediate application, would be entitled to a new one. *ib*

4 In taking an injunction bond the officer acts under an authority of law, and inserts the name of the obligees without their consent, so that where one is properly inserted, and another unnessarily, the bond will be valid as to the right one, and the other nugatory.
Pargoud vs. Morgan, 100

5 In assessing damages on an injunction bond, the jury may very properly allow the plaintiff for his reasonable costs and trouble in obtaining a dissolution of the injunction in which the bond was taken. *ib*

6 The plaintiff against whom an injunction has been obtained, may compel the defendant to prove, in a summary manner before the judge, the facts alleged in his opposition; and the proper mode of proceeding is by serving a rule on the defendant to shew cause, why his injunction should not be dissolved: upon a proper shewing, the rule will be continued to procure the necessary proof required by the seizing creditor.
Forsyth vs Lacoste, 319

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JUDGMENT.

1 No matter can be urged to delay the execution of a judgment which might have been presented on a trial of the cause. *McMicken vs Millaudon*, 180

2 The judgment cannot include interest if none be given by the verdict, but such an error furnishes no grounds for an injunction, nor is it a cause of nullity. *ib*

3 A judgment rendered by a Spanish tribunal before the cession, bears interest from the judicial demand.
Baudin vs Pollock's Curator, 184

JUDGMENT BY DEFAULT.

1 Where no answer has been filed, a judgment by default must be taken before any final judgment can be rendered, and if final judgment be rendered without this formality, it carries with it a vice or a defect for which it may be annulled.
Dugal vs Markham et al. 29

JUROR.

1 The act of 1825, declaring it not to be good cause of challenge to a juror, that he was a member of the corporation that was a party to the cause, is not repealed by the provisions of the Code of Practice.
Mayor vs Ripley, 344

2 A trial by jury cannot be refused on the ground that the suit commenced by motion instead of petition.
Gale vs Quick's bail, 348

JURISDICTION.

1 When a plaintiff brings suit in the Court of Probates to recover property which is claimed by the defendant under a will, it will be dismissed for want of jurisdiction, as involving a question of titles to property, which the Probate Court cannot try. *Sharp vs Knox*, 23

2 The Court of ordinary jurisdiction, *i. e.* the District Court, can alone try questions of title, and a suit involving the right to property, claimed under a will and confirmatory act, must be brought in this Court. *ib*

4 The law empowering a judge of the late Superior Court of the territorial government, to appoint curators to minors, &c., and grant letters of curatorship to probate judges is repealed, and that authority vested in a justice of the peace.
Humphries vs King, 49

4 A court is not ousted of its jurisdiction in consequence of the sole judge of it, being interested in a suit as being personally incapacitated. *ib*

5 If a probate judge is a curator, his court is the proper and exclusive jurisdiction to compel him to account, although from personal interest he cannot sit; yet there is no other jurisdiction to try the case, which is a *casus omissus*, that the judiciary cannot supply. *ib*

6 A suit against an executor for property sold by him contrary to law, is not a suit against the estate, but against him in his own right, and therefore, cannot be brought in the court of probates.
Bouquette's Guardian vs Lonet, 193

7. A marshal of the United States District Court, in his official capacity, is not, perhaps, amenable to a state court, and as such, cannot be controlled by it; but if in that capacity he wrongs a citizen of the state, he is individually answerable, and in her courts.
Bauduc's Syndic vs Nicholson, 200

8 If the petition charges the defendant with having acted under a pretended admiralty process, a plea to the jurisdiction of the court takes the fact for granted, that the process was a pretended one, and the plea is no answer to the petition. *ib*

9 Pleading to the merits is only one way of giving jurisdiction to the court. Issue joined on any other matter, unless where the incompetency of the judge is absolute, will have the same effect.
Flower v *Hagan et al.* 225

10 Claims against an executor for the payment of the testator's debts, are exclusively cognizable before the court of probates where the succession is opened. *Smith vs Wilson*, 227

11 The court of probates has exclusive jurisdiction to decide on claims for money which are brought against successions administered by testamentary executors. *ib*

12 On the division of a parish, the former court of probates retains its jurisdiction of succession theretofore opened.
Patoulett vs Patoulett, 270

13 It is the sum claimed, and not that recovered, which gives jurisdiction.
Lewis vs Clark, 438

LAND.

It does not follow that because the title is confirmed in the name of a third person, that the right, title, and interest, to the land covered by it, may not be in the name of the person by whom it is claimed. *Kemp vs Kemp*, 24

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LEASE.

1 If a lessee holds over without the opposition of the lessor, after the expiration of the lease, there is a tacit reconduction which binds him to pay the rent, and entitles him to hold the premises.
Mossy vs Mead 157

2 Although a lease is cancelled, if the lessee remains in possession he is liable for the rent, on a tacit reconduction, in the same manner as if he had held over, after the lapse of the time for which he had obtained the lease. *Foucher* v *Leeds*, 405

3 Judgment can only be given for the rent due at its date. *ib*

4 In an action for rent, the plaintiff will recover without adducing title, if he shew a continued possession.
Paulding vs Dowell, 452

LEGATEE

The universal legatee, who after taking possession of the estate, and paying the debts of it, is credited by two thirds of the succession, only loses one third of the debts due to him, or by him paid. The confusion which existed while he represented the whole estate, ceases with the eviction of part of it. *Hodder* v *Nelder*, 525

MANDAMUS.

1 The article 790 of the Code of Practice does not embrace the issuing a mandamus to compel an auctioneer to do his duty, it only applies to cases which have a tendency to aid the jurisdiction of the supreme court, which is appellee only.
Winn vs Scott, 88

2 Whether the writ of mandamus can be used for the purpose of enforcing the payment of a sum of money? Quere.
Louisiana College vs Treasurer, 394

3 Writs of mandamus never issue to officers charged with a public duty, to do any act, where the law vests them with a discretionary power. *ib*

MANDATE.

1 A joint authority cannot be exercised by a part of those to whom it is delegated, even after the death of one of them. *Sample et al vs Lamb's curator*, 275

2 One who exceeds the limits of his mandate, has no claim for indemnification 528

MINORS.

1 The under-tutor is the proper person to maintain an action for the recovery of minors property which was sold to satisfy the debts of the mother.
Chisolm vs Skillman, 142

2 The minor who has reached the age of majority during the pending of the action, may make himself a party, but the mother cannot supply the place of the under-tutor. *ib*

3 The sale of minors property, or that of a succession, where the heirs are absent, must pursue the forms of law directed for its alienation, or the sale must be annulled. *Elliot vs Labarre*, 326

4 The authority of the judge of probates is necessary to enable the register of wills to sell. The latter is merely a ministerial officer, and can make no disposition of the property of a succession unless under the direction of the judge, to whom the law entrusts it control. *ib*

5 The minor who attempts to recover from his tutor the price of an immoveable, which the latter has sold, cannot, in case he fails to obtain the whole price, sue the purchaser for the object in his possession. *Harty vs Harty*, 518

6 Where the tutrix acquires property contrary to law, she is a possessor in bad faith, and responsible for the rents and profits. *ib*

7 When minors come of age they may confirm irregular alienations of their property and demand the price, or they may disavow them and claim the thing and its fruits; but they cannot do both. *ib*

8 Minors cannot claim interest on the value of property which remains unsold, or which they state was sold illegally. *ib*

9 Every settlement between the tutor and the minor arrived at the age of majority is void, which is not preceded by an account and delivery of vouchers, ten days before the receipt is signed; and these facts must appear by the receipt. *ib*

10 Revenue due from the time of emancipation, is due from the time the minors are emancipated by marriage; but binding one of them as an apprentice does not emancipate him. *ib*

11 If minors property has been sold contrary to law, their mortgage will take precedence of the liens which the purchasers may have subjected it to in their hands. 524

12 The consent or approbation of the family meeting is not required to enable the tutor to furnish security in lieu of the general mortgage: their duty is confined to estimating the value of the objects presented for special mortgage, and until their decision no change can be made

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in the security of the minor.
State vs. Pitot, 534

13 So long as there is a possibility of obtaining a decision from those to whom the law has given the preference in deciding on the affairs of minors, the court cannot entertain the question of submitting their interest to the decision of others ib

MORTGAGE.

1 No legal mortgage exists in behalf of the state, or the parish, or the property of its collecting officers, since the adoption of the Louisiana Code in 1825.
Police Jury vs Hawe et al. 42

2 The city has no right of mortgage on the property of individuals in consequence of their becoming securities for the city treasurer. *Blache et al* v *Mayor* 482

3 The syndics of an insolvent cannot release a mortgage existing on property sold by the insolvent previous to his failure, even to disencumber the property so as to receive the price from the purchaser: their powers only extend to the discharge of existing liens on property surrendered by the insolvents.
Dorfeules vs Duplissis, 484

4 Where syndics release a mortgage existing on property sold before the surrender by the insolvent, receive the price and place it on the tableau to the credit of the mortgage creditors, who are minors, but represented by their under-tutor, they still have their recourse on the mortgage property, because they were not cognizant to the fact of the mortgage being released. ib

5 The recorder of mortgages is forbidden to refuse or delay the recording of any instrument, importing or stipulating a privilege or mortgage, presented to him for that purpose; but must do it in the order of time, and without leaving any blank space between the acts as presented
Florence vs Mercier, 487

6 The builders and material men's privilege must be recorded in the office of the recorder of mortgages, to have effect against third persons. ib

7 The recorder of mortgages is liable in damages to the party aggrieved, for omitting to record, and cannot cancel a mortgage without the party, whose right is thereby destroyed, has been heard. ib

8 The third possessor of property subject to several mortgagees, and who has purchased from his vender, a right to the first mortgage, when the property is sold by the sheriff, on the application of subsequent mortgagees, is entitled to be first paid out of the proceeds, although he become the purchaser himself.
Millaudon vs Allard et al. 547

9 A mortgage in favor of an absent person, executed and registered by the mortgager, although not accepted by the mortgagee, takes precedence of a posterior mortgage duly accepted and registered. ib

10 A mortgage cannot be shewn to exist by parole testimony: but the right to a mortgage resulting from a transfer of a claim to which a mortgage is attached, may be proved by parole evidence.
Moore's Administrator vs Louallier, 571

11 The law requires a notary to make a memorandum at the foot of a note given for the payment of a sum secured by a mortgage; but it does not require him to certify the transfer of such note, or any one which is given on renewal of the original note. ib

12 The process verbal of sale of an estate made by the judge of probates, subscribed by the purchaser and his sureties, which stipulates or secures a mortgage on the property sold, is considered of record in the parish judges office, by being deposited and put on file in the office: it is thus deemed recorded according to the requirements of law. ib

NOTARIAL ACT.

A notarial act has no effect against third persons but from the date of its registry.
Williams vs Hagan and Co. 122

NOVATION.

1 If a creditor gives a receipt for a draft in payment of his account, the debt is novated. *Hunt vs Boyd*, 109

2 The debt is not novated when the vender consents that the person proposed as endorser may, if he chose, pay the price in cash. *Lalaurie vs Cahallen*, 401

NULLITY.

1 An action of nullity cannot be instituted in the district court to set aside and annul a judgment of the supreme court.
Melancton's heirs vs Broussard, 8

2 The district court cannot take jurisdiction and sustain an action of nullity to set aside one of its own judgments after it has been passed upon by the supreme court, whether it be affirmed or not. ib

3 Nullity does not result from the failure to annex copies of authentic acts to

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a petition. *Smith's heirs vs Blunt*, 132

4 A judgment obtained by the fraudulent representations of the plaintiff's attorney, is void. *ib*

5 In such an action, the defendant is not driven to a distinct action, but may demand the nullity whenever it is sought to be enforced. *Paxton vs Cobb*, 137

6 A party who bought his own property at a sale on a *fi. fa.* and gave a twelve months' bond, has thus far executed the judgment as to debar himself from an action of nullity. *Fluker vs Lacy*, 265

OBLIGATIONS,

Joint and Several.

1 A promissory note, beginning "I promise to pay," etc., and signed by several persons, is several as well as joint in its application; and the parties may be sued jointly and severally, and judgment rendered *in solido*.

Bank of Louisiana vs Sterling, 60

2 In conditional obligations the law at the time the obligation was contracted, not that in force when the condition takes place, must govern the right of the parties. *Town vs Syndics of Morgan et al.* 112

3 A promise to pay out of the proceeds of the next crop, is a time given for the discharge of an engagement, and not a condition on which the fulfillment of the obligation depends. *Johnson vs Bell*, 258

4 *Solidarity* in obligations must be express, except in the case of commercial partners. *Bennett vs Allison*, 419

PARAPHERNAL PROPERTY.

1 The wife has the right, at any time, during marriage, to present her claim and recover the amount of her paraphernal property against her husband, and resume its administration

Gilbeau's Heirs vs Cor er, 6

PARISH JUDGE.

1 At a probate sale where property is struck off to the brother of the parish judge who makes the sale, the latter may take a conveyance, and receive a valid title to the thing sold, without being considered a purchaser at his own sale.

Scott vs Calvit et al 69

2 But admitting it to be proved that the brother of the parish judge bought the property expressly for the latter, the nullity occasioned thereby, would be only relative, and could be taken advantage of only by the heirs, or creditors of the succession sold. *ib*

PARTNERS.

1 The payment of partnership debts by a solvent partner, ought not to delay the payment to the syndic, of moneys which he was otherwise entitled to receive.

Warfield vs His Creditors, 189

2 On the insolvency of a partner, his syndic has a concurrent, but no exclusive right to the liquidation of the affairs. *ib*

3 A copartner has no interest in a note given to his partner not for the benefit of the firm, and which is not endorsed to him. *Terran vs Delastra*, 324

4 The sole intention of the legislature by the article 3128, was to dispense with the service of the act of pledge required by the preceeding article in case of paper not negotiable

Charbonnet vs Toledano, 386

5 Until the accounts of the partners are settled, one partner has no action against the other, and of course prescription does not run. *Bauduc's Syndic vs Lauret*, 449

PARTY IN INTEREST.

1 A party in interest may convey his legal title in a note to a third person, and by such conveyance, give that person a right to sue in his own name. In such a case, the defendant may offer every defence to the suit by the agent, which he could present against the action of the principal. The agent can only be considered as the nominal plaintiff.

Lacoste vs De Armas, 263

PRACTICE.

1 When a cause is remanded to ascertain a question of fact, on an appeal from a judgment, if on an examination of the evidence sent up with the new record, there appears no error, in the proceedings of the inferior judge, the judgment will be affirmed.—*Marck vs Church Wardens of St. Martinsville*, 4

2 In examining the evidence upon which the jury acted, if the court is unable to concur with the jury in opinion, it will, in accordance with its usual practice, remand the cause for a new trial, and the opinion of another jury.

Montgomery vs Russell, 67

3 If an appellant urge that the subject of the contract between the parties is illicit and the contract void, after having a-

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vailed himself of its amount, to plead in reconvention and augment the sum in dispute to three hundred dollars and upwards, and be thereby entitled to appeal, such defence will be deemed as coming with an *ill grace* from the party using it, and be disregarded. *Rife vs Henson*, 96

4 In the progress of a suit on a note for the purchase money of a tract of land, the court will not delay the proceedings to grant an order of survey, to ascertain the supposed interference of other claims, and on the bare suggestion of the defendant that it is deficient in quantity, without any affidavit to that effect. *Faulk vs Wooldridge*, 98

5 A plaintiff should not be delayed in the prosecution of his rights apparently just, by a bare suggestion of deficiency contained in the defendant's answer. *ib*

6 After a general denial, an amended answer, setting up a want of consideration to the note sued on, cannot be received. *Calvert* vs *Tunstall*, 207

7 If it appear from the pleadings or evidence, that both parties claim under the same title, neither will be permitted to attack it. *Trahan vs McMannus* 209

8 It is not too late after the jury are sworn, to strike from the record documents irregularly filed. *Baines* v *Higgins*, 220

9 The court should charge the jury not to notice a supplemental petition irregularly filed; otherwise, if no objection be made to the introduction of evidence in support of its allegation. *ib*

10 A co-defendant, although he reside in a different parish, must answer in that where the suit is brought. *Flower* vs *Hagan et al.* 223

11 Nothing prevents a suit being bro't for the surrender of a note not sued on. *ib*

12 Nothing can be assigned as error of law which could have been cured by evidence legally given at the trial. *ib*

13 The circumstance of the jury finding three hundred dollars damages, when only two hundred were claimed, furnishes no ground for setting aside their verdict; and for the excess, the attorney had a right to enter a *remititur*. *Mead* v *Buckner*, 282

14 It cannot be considered an *incident in the cause*, after judgment is rendered against the defendant, to call in another party for the purpose of obtaining judgment against him: it is, on the contrary, the commencement of a new suit against the surety, growing out of the proceedings against the principal which have terminated in judgment and execution. *Gale* vs *Quick's bail*, 348

15 In a suit for the rescision of a sale of property for want of authority in the agent to sell, and of *lesion* in the price, if no decision is made by the district court on the allegation of *lesion*, it will not be noticed in the supreme court. *Livingston* vs *Coiron*, 441

12 The privilege conferred by the 249th article of the Louisiana Code, is an exception to the general rule, and cannot be extended beyond the case provided for *Goodloe vs Hart*, 446

13 If a petition in intervention be answered on the merits, and the cause tried in relation to them, the right of the party to intervene cannot be questioned on appeal. *Herman vs Pfister*, 455

14 Holders of negociable instruments are not required to prove the consideration they gave for them, unless specially called on to do so, by that consideration being denied in the answer. *ib*

15 For the government of the judicial proceedings in the United States courts within the limits of Louisiana, its laws directing the mode of practice in the courts of the state, passed prior to the 26th of May, 1824, must be looked to as the legitimate rules of practice in those of the United States, and not those rules of practice which may have been subsequently introduced by the legislative power of the state. *Bradbury et al vs Morgan et al.* 476

16 A suit to recover damages against intervenors or third persons in a former suit, and who obtained judgment and dismissed the plaintiffs attachment suit, is wholly untenable, while such judgment stands unreversed and unappealed from. *Adams vs Harrison*, 587

PRESCRIPTION.

1 If the plea of prescription be pleaded in the Supreme Court, the party to whom it is opposed may demand that the cause be remanded for trial upon that plea—but if it appear that substantial justice has not been done, a new trial will be ordered. *Chew et al.* vs *Keene* 120

2. By the laws of Spain prescription ran against a married woman during coverture, for her pharaphernal rights. *Benite* vs *Alva*, 366

3 The prescription applicable to overseers does not apply to an agent employed in superintending the construction of a steam engine This action is barred by

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the prescription of one year.
Nicholls vs *Hanse et al* 332
4 If a claim be barred by prescription, it still may be offered by way of exception. *ib*
5 The prescription of thirty years does not necessarily extinguish all debts.
Gravier vs Gravier, 457

PLEDGE.

1 When a firm contracts with certain individuals for a letter of credit, upon which it receives advances of 4200 dollars, and agrees at the same time to put notes and accounts into the hands of these individuals to indemnify them against loss, they will hold the notes, &c., thus pledged, against other creditors, although the firm is in failing circumstances, and the notes, &c., are not conveyed to the pledgees by authentic act, etc.
Edgar vs *Simons et al*. 19
2 Where negociable notes are delivered as security for a debt, and no authentic act is made to evidence the pledge, they will not confer a preference in case of insolvency. *Devlin* vs *His Creditors*, 360
3 The pawnee who has not taken written evidence by an authentic act or private instrument of the pawning, cannot avail himself of it against third persons.
Canezo's Syndic vs *Cuadra*, 495

PROMISSORY NOTE.

1 A promissory note made payable to order is transferable by endorsement, only to enable the endorsor or assignee, to endorse it over, or to resist the drawers claim for compensation of sums due him from the transferor, on account of payment made before transfer, or before the note became due.
Hughes vs Harrison et al. 89
2 But the holder or payee of a note even payable to order, may transfer all his interest in it without endorsing it, in like manner as in a cession of goods or consignment to trustees. *ib*
3 A mutual understanding or agreement between the obligor and obligee of a note, to have the contract for which it is given rescinded, and the note cancelled, will be considered binding, although omitted or neglected to be actually carried into effect; and a recovery on the note will be withheld. *Benson vs Smith*, 103

PROMULGATION.

An act of the legislature, the execution

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of which is suspended by one of its clauses, or by a delay of its promulgation, may, in the meanwhile, be modified or repealed by a posterior act.
Mayor vs Ripley, 344

QUASI OFFENCES.

An action for the repayment of money obtained under an unlawful agreement, is not debarred by the 3501st article of the Code in relation to *quasi* offences.
Perillait vs. Puech, 428

RECONVENTION.

1 It is not necessary to file an answer to a plea in reconvention.
Mead vs Buckner, 282
2 The principle that reconvention on reconvention cannot be permitted was firmly settled by our ancient laws, and the Code of Practice neither contemplates nor provides for such a mode of proceeding. But the party must object to its being filed at the time it is offered.
Mead vs Buckner, 282
3 Where a person enters upon vacant premises, if on being sued for the rent by the owner (who was unkown to him when he entered) he reconvenes for repairs, he will be considered not in the light of an usurper, but as possessing for the owner. *Paulding vs Dowell* 452

RECUSATION.

It is a good cause of recusation in a judge, that he is owner of a pew, when the plaintiff seeks to recover the ground on which the church is erected.
State vs Lewis, 389

REDHIBITION.

1 Proof of a slave having ran away once does not constitute a habit of running away. *Ails vs Bowman*, 250
2 A slaves misrepresention of his own name and that of his master when arrested, is not a sufficient circumstance to imply the habit of running away from a single instance. *Bocod vs Jacobs*, 408
3 Circumstances posterior to the sale may have some weight in proving the existence of a previous habit; but the mere fact of running away after the sale, added to a single instance before, does not establish an anterior habit. *ib*
4 The vender is not affected by the assertion of his broker that the slave is a good subject. Such a character is not ab-

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solutely inconsistent with the circumstance of his having absented himself for a few days. *ib*

5 Questions relating to redhibitory vices and defects in things sold, must be solved principally in relation to the peculiar circumstances and facts of each individual case. *Beale vs De Gouy*, 468

6 Unless the object sold be absolutely useless, it is rather the duty of courts of justice to make a fair deduction from the price, than entirely to avoid the sale, especially when the real value of the thing, bears any reasonable proportion to the price agreed on. *ib*

RES JUDICATA.

1 There must be a plaintiff and defendant as well as judge, and an issue joined, to give a judgment the force of res judicata. *Marchand* vs *Gracie*, 147

2 The plea of res judicata is not sustained by a judgment of nonsuit.

Perrillait vs Puech, 428

3 The judgment of homologation should cover the whole ground on which the minors claim is resisted, as well that of the release of the mortgage as the payment of the price received for the mortgaged premises, before it can have the effect of res judicata.

Dorfiules vs Duplesis, 484

4 The decree of a foreign court of admiralty is res judicata in regard to the matters decided therein.

Zeno vs Insurance Company, 533

5 An action cannot be sustained, to set aside a former judgment of the same court, unappealed from and unreversed: it forms res judicata betweeu the parties.

Andrews vs Harrison, 587

SALE.

1 When a probate judge proceeds to a public sale of property under his own order of court, he assumes the character of an auctioneer, and as such, is not answerable for his conduct, except under ordinary proceedings established by law.

Winn vs Scott, 88

2 Where A exchanges with B the negro Jack for Aaron, and takes a bill of sale from B, providing "that if he makes a satisfactory title to Aaron by a particular day, named in the obligation or bill of sale, in that event is to be void, otherwise to be in full force and virtue." The intent of such an obligation is that B conveys Jack to A by a title defeasible, on his executing a good title to Aaron.

Madry vs. Young, 104

3 But in default of B's making a good title to Aaron, Jack is the property of A, in virtue of the bill of sale, who first exchanged him with B; on the aforesaid condition, A will hold Jack in despite of the vendee of B. *ib*

4 Where a price is agreed upon for an article which is neither weighed or delivered, and two days thereafter it be destroyed, it is not such a delay as to make the agent liable to the owner; nor is it incumbent upon the former to sue the buyer when the owner declines giving him authority for that purpose.

Lamoreau vs. Fowler, 174

5 A creditor at whose suit the property is sold, cannot treat the conveyance as a nullity. If the alienation be in fraud of his rights, he ought to bring an action to set it aside.

Trahan vs *McManus* 209

6 If A direct B to purchase a cargo, and draw for the amount on C, on the protest of the bills A is immediately liable for the amount of the cargo, although B produces not the protested bills.

Daniels as Burnhan. 243

7 If a slave be bought as a runaway, and is afterwards employed on a steam boat without permission from the owner, from which he absconds, the owner can only recover the price paid for the slave.

8 If, owing to irregularities in the proceedings, a public sale be illegal, the purchaser must return the property, for he cannot hold it under a sale which is null and void. If, on the contrary, the sale be perfect, he must pay the price and cannot keep both the property and the price he was to pay for it.

Danois vs Leeds, 355

9 When the last bidder does not comply with the terms of the sale, the law authorizes the property to be put up again for sale; but it does not *make it the duty of the vender to do so*, and leaves him at liberty to pursue all other legal remedies.

Lalaurie vs Cahallen 401

10 It is discretionary with the court to grant to the vendee a delay to comply with the conditions of the sale. *ib*

11 The tradition and not the naked consent of parties, is necessary to transfer the dominion of property. But as an actual delivery of rights and credits or of incorporeal objects, cannot be made, the

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transfer, to affect third persons, must be made by delivery of the title or evidence of the debt, and notice to the debtor. 422

12. It is a principal of the laws of this state, that the property of debtors is always held liable to their creditors until a full and complete transfer and tradition is made to the purchaser. *ib*

13 Whether a contract for the purchase of tobacco not inspected, can be enforced? Quere. *Lewis vs Clark*, 438

14 A written promise to sell or convey real property is valid, notwithstanding there is no signing or written assent by the promisee. Proof of that assent may be proved by evidence *aliunde*. *Joseph vs Moreno*, 469

15. The act of adjudication confers a complete title to the object or property sold on the purchaser, without any deed or act passed before a notary by the seller *Marigny et al. vs Nivet et al.* 498

16 And the purchaser who buys according to certain definite and fixed boundaries described in the act of adjudication, takes all the lands between such bounds, although it gives him a greater quantity than that called for in his title. *ib*

17 A purchaser who accepts a deed for a less quantity than what is contained in the act of adjudication, does not thereby lose the right he has acquired to a larger amount of property under the sale. *ib*

18 The acceptance of a deed under such circumstances, is in the nature of a contract entered into by the purchaser *in error* of the rights he already possessed, and as such, is not binding on him. *ib*

19 Where A obtains a letter of credit, but before it is presented the persons who gave it, losing confidence in A, direct him not to use it; but he afterwards presents and uses it, contrary to directions, by purchasing goods on the faith of it from B; such use is a fraud practiced on B, which authorizes him to claim the goods in preference to an attaching creditor of A.

Gasquet et al vs Johnson et al. 514

20. A fraudulent purchaser, who obtains property by a fraudulent representation, acquires only the naked possession, which gives no right to any of his creditors to attach it in his hands. *ib*

SLANDER.

1 Actions for slander and defamation may be sustained under our Civil Codes, without resorting to the civil laws of other countries, which are said to be repealed by our statute of 1828.

Carlin vs Stewart. 73

2 In actions of slander and defamation of character, the jury or court must often allow damages when no special damages is shewn to have been sustained. *ib*

3 Professional men are often unable to exhibit possitive proof of the injury done to their reputations by malicious persons and slanderers, and would be, in many cases, absolutely remediless, if a jury or a court are not allowed to find a guide in the dictates of their consciences. *ib*

4 On the score of quantum of damages the jury are the legitimate judges, and unless they clearly err, the verdict ought to stand. *ib*

6 In actions of slander and defamation of character, it is sufficient to sustain the action, to prove in substance, the words charged to have been spoken.

Trimble vs Moore, 577

7 In cases of this kind, slanderous words spoken, are not to be construed in a technical manner, but taken in their proper sense, and considered in relation to the idea they were intended and might convey to the bystanders, or company to whom they were addressed. *ib*

SLAVE.

1 The infliction of cruel punishment on the slave by his master, *is* a criminal offence which must be punished by a criminal prosecution, and not in a civil action. *Markham vs Close*, 581

2 Maiming, mutilating, or cruel or inhuman treatment of a slave, is a public offence, and must be prosecuted criminally, and after conviction, the fine and other penalties for such conduct, are to be levied on the offender by the court before whom the conviction takes place. *ib*

3 The Civil Code treats alone of private rights of individuals, and the various rights growing out of property; but it may, in the mean time, provide in what cases a breach of the penal laws brings with it a *forfeiture of private rights*. *ib*

SUBROGATION.

Where a builder contracts with the owner to build a house, and enters into a written agreement with third persons to slate it; the former acquires a privilege to which the latter, on certain events happening, may be subrogated.

Florence vs Mercier, 457

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SURETIES.

1 Sureties who sign a sheriff's bond, thereby acknowledging him as sheriff *de facto*, cannot, for any informality or defect in his appointment, be permitted to *deny the capacity* of their principal thus recognized. *Police Jury vs Hawe et al.* 41

2 Indulgence given by not suing the principal, will not exonorate the sureties, unaccompanied by an express grant of time. *ib*

TABLEAU.

1 A party has a right to bring forward at any time before the filing of the tableau of distribution and its homoligation, all claims in virtue of which he has become creditor since the rendition of the judgment, on demands which existed previous thereto; and for this purpose, may file a supplemental petition.

Franklin vs Syndics of Warfield, 126

2 A creditor who has appeared in the concurso and successfully attempted to obtain a different place on the tableau, is bound by the final judgment, and cannot maintain an action of nullity.

Croft vs Kirkland's Syndic, 155

3 A creditor of an insolvent who files his opposition to the homologation of the tableau, cannot afterwards urge any irregularities against the proceedings, which might have been embraced in his first opposition. *Kirkland vs His creditors*, 205

4 The syndic of an insolvent cannot maintain an action after the filing and homologation of the tableau of distribution. *Beauvais vs Morgan*, 287

TAXES.

1 One notoriously acting as sheriff may rightfully be entrusted with the collection of the parish taxes, whether he be sheriff *de jure* or not, and his sureties are bound for the faithful performance of his trust. *Police Jury vs Hawe et al.* 40

2 The parish loses none of its rights against the sureties of its collecting officers, by not enjoining an execution of the state, issued against such officers, for arrearages of state taxes. *ib*

3 A purchaser of town lots in the city of New Orleans, from the United States, is exempt from taxation for five years after their alienation.

Mayor et al. vs Piquet, 474

THIRD PARTY.

If the plaintiffs claim through a deed made to the trustee, he is not a third party to them, in relation to any proceedings which may have taken place in respect to the property he held in that capacity. *Dismukes vs Musgrove*, 335

THIRD POSSESSOR.

The plaintiff must seek redress by personal action against the coheir or his representative, before he can attack the third possessor. *Chew vs McDermot*, 235

TRESPASSER.

1 Where slaves are hired out for a term which is unexpired, and in the mean time the owner sells them to another, if such purchaser take them from the person to whom they were hired before the term expires, he will be answerable in damages as a trespasser.

Grayson vs Wooldridge, 94

2 In an action of trespass, it is not necessary to state the trespass happened in any particular part of the parish; because had it been stated, evidence that the trespass was committed in some other place in the parish, would have been good, even in criminal cases. *ib*

3 The plaintiff who was no party to the deed of sale between Wooldridge and Bowden, was a competent witness to prove the declaration of Wooldridge's vender, to show Wooldridg's knowledge of the plaintiff's right to retain the negro on hire. *ib*

USURY.

1 The execution of a note upon which suit is founded being established, and its consideration shewn, the plea of usury set up against it, appearing unfounded, judgment for the amount of the note, interest and costs, will be affirmed.

Franklin vs Alexander, 76

2 An agreement made in New York to be executed there, must be governed by the laws of that state. If such contract is usurious and void by the laws of that state, it will be considered so here; because this court must decide the cause here as it would be decided there The statute of the state of New York prohibits taking more than seven per centum for the loan of money, and by the terms of the statute, the prohibition is extended to wares, merchandise, or any thing else. *Clague et al vs Their Creditors*, 114

3 If in the exchange of notes between A and B, more than seven per cent. per

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annum as interest be taken, the contract is tainted with usury, and void, according to the decisions of the courts of New York on that statute. *ib*

4 Those courts have established the maxim, that by no shift or device can more interest be taken, or profit made, than that which the law permits on the loan of money. *ib*

5 When A agrees with B to exchange their respective notes, bearing interest at the rate of six per cent. per annum, and in consideration thereof, to insure with B the lives of different individuals, and to consign his sugar crop in Louisiana to B, for sale in New York, on commission, this agreement is null and void under the aforesaid statute of New York against usury. *ib*

6 A contract by which usurious interest is exacted and paid, is in compliance with a natural obligation and cannot be recovered back. Such a contract is not *malum in se* but *malum prohibitum*.

Perillait vs Puech, 428

VERDICT.

1 A plaintiff may release a part of the verdict even before judgment is pronounced upon it, to avoid a motion for a new trial. "Every man may renounce his rights or any part of them."

Pargoud vs Morgan, 100

2 If a jury be permitted, in the absence of the defendant and without any application from the plaintiff, to reconsider their verdict and bring in another, the second will be set aside and the cause remanded for further proceedings in the state it was when the jury requested permission to amend it. *Abat vs Holmes* 118

3 The court cannot add interest to the verdict. *Mullony vs McDougal*, 157

5 In complicated transactions of several years standing, it is difficult to ascertain on what grounds the jury found their verdict, and in such cases, it will not be disturbed.

Eauduc's Syndic vs Laurent, 449

5 In a suit on a note twenty four years after it becomes due if the testimony does not conclusively establish payment, but presents circumstances to induce the jury to infer that fact, their verdict will not be disturbed. *Petayvin vs Maurin*, 480a

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6 The verdict of the jury will be set aside if contrary to the evidence of the case. *Rousseau vs Chase*, 496

7 In a case involving accounts of forty years standing, the verdict of a jury has less weight than in other cases, because it requires operations not easily performed in a court or jury room.

Baudin vs Conway, 512

Via Executiva and Juicio Ordinario.

1 The affidavit required when the mortgagee proceeds by the *via executiva* against a third possessor, is not required in the *juicio ordinario*.

Smith vs Blunt, 132

2 Both remedies cannot be pursued at the same time, and after the *juicio executivo* is turned into the *juicio ordinario*, the former cannot be again resorted to.

De Gruy vs Hennen, 544

WALLS.

Walls erected by a proprietor on his property which still leave a space between them and his neighbors, cannot be considered as surrounding the premises. They are not division walls, and it is only these which authorizes one coproprietor to refuse permission to another to raise a separation between them on the land of both. *Crocker vs Blanc*, 581

WARRANTY.

1 To support an allegation of breach of warranty, a judicial sentence is not indispensable; but to supply the want of it, other evidence must prove that the acts were illegal, and that forfeiture followed them, or would have followed them.

Thompson vs In. Co. 228

2 A warranty against illicit trade is forfeited only by the vessel being engaged in an illicit trade, which renders her liable to seizure. If the illicit trade be not the ground, but only the pretext, there is no breach of warranty. *ib*

3 Where a party resorts to his action of warrantry, before a decision of a court of justice is made against him, he assumes and takes upon himself the burthen of proving that the land belongs to another. *Kemp vs Kemp*, 240